In the High Court of Judicature at Madras

Dated: 21/06/2004

Coram

The Hon'ble Mr.Justice V.KANAGARAJ

Civil Revision Petition (P.D)No.2586 of 2003
and
C.M.P.No.19507 of 2003

J.David ... Petitioner

-Vs-

1. J.Solomon
2. D.Suganthi
3. Y.Durairaj ... Respondents

Civil Revision Petition filed under Article 227 of the
Constitution of India praying for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr.G.Jermiah

:O R D E R

The above civil revision petition has been filed against the order dated 30.01.2003 and made in I.A.No.56 of 2000 in O.S.No.139 of 1991 on the file of the Court of Subordinate Judge, Tiruvallur.

2. Today when the above civil revision petition was taken up for consideration in the presence of the learned counsel appearing on behalf of the respondents, with no representation made on the part of the petitioner, this Court is left with no choice but to pass this order hearing only the learned counsel appearing on behalf of the respondents, and having regard to the materials placed on record in which event this Court is able to assess that the interlocutory application filed in I.A.No.56 of 2000 in the regular suit O.S.No.139 of 2001 pending on the file of Court of Subordinate Judge, Tiruvallur which is the subject of dispute has been filed before the lower Court with the prayer for the appointment of a Commission in the final decree petition at the final decree stage which is vehemently opposed by the other side resulting in the interlocutory application being dismissed by the trial Court, testifying the validity of which, the plaintiff has come forward to file the above civil revision petition.

3. Learned counsel appearing on behalf of the respondents would point out that one of the items shown as Item 6-A in the list of suit

schedule properties in the final decree petition, do not form part of the preliminary decree at all and, therefore, anything done much less the appointment of a Commission for the division of the properties, based on such a defective schedule of properties, will only result in failure of justice and, therefore, at no stretch of imagination such an application could be allowed and the dismissal by the trial Court has been done rightly.

4. This Court does not have a second opinion so far as the decision arrived at by the trial Court in dismissing the above interlocutory application filed by the plaintiff in I.A.No.56 of 2000 in the above said suit and the decision has been made based on a clear discussion held on the subject in which, the doubts raised by the other side has been substantially proved and, therefore, this Court does not find any valid or tangible reason to cause its interference in the order made by the lower Court and hence, the following order.

In result,
(i) the above civil revision petition does not merit acceptance and it becomes only liable to be dismissed and is dismissed accordingly;

(ii) the order dated 30.01.2003 and made in I.A.No.56of 2000 in O.S.No.139 of 1991 by the Court of Subordinate Judge, Tiruvallur is confirmed;

(iii) consequently, connected C.M.P.No.9507 of 2003 is closed;

(iv) there shall be no order as to costs.

Index :Yes
Internet :Yes

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